

## CHAPTER 18

## Section 54: Obligation to report commission of sexual offences against children or persons who are mentally disabled

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## Section 54: Obligation to report commission of sexual offences against children or persons who are mentally disabled

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### 1 INTRODUCTION AND BACKGROUND

The duty to report the knowledge of the commission of sexual offences against certain vulnerable victims is newly provided for in this section of the Criminal Law (Sexual Offences and Related Matters) Amendment Act (hereafter 'SORMA/the Act'). It draws inspiration from two prior reporting obligations related to the reporting of child abuse and neglect: the first encapsulated in the Child Care Act 74 of 1983, now repealed *in toto* by the Children's Act 38 of 2005 (as amended); and the second provided for in s 4 of the Prevention of Family Violence Act 133 of 1993. The latter section, which was not repealed by the coming into operation of the Domestic Violence Act 116 of 1998, has also been replaced with the Children's Act 38 of 2005, which came fully into force on 1 April 2010.

International law exists related obliquely to the reporting of sexual offences. In particular, mention must be made of Art 19 of the UN Convention on the Rights of the Child (UNCRC),<sup>1</sup> ratified by South Africa in 1995, which provides not only for the protection of the child from all forms of violence, including sexual violence, but further requires the establishment of a system for the identification, **reporting**, referral, investigation, treatment and follow-up of child abuse and neglect.<sup>2</sup> The measures<sup>3</sup> contemplated include social, administrative, educational and legal measures. The *Guidelines for Reports by States Parties* on the UNCRC<sup>4</sup> require States

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<sup>1</sup> GA res 44/25, annex, 44 UN GAOR Supp (No 49) at 167, UN Doc A/44/49 (1989), *entered into force* 2 September 1990.

<sup>2</sup> My emphasis.

<sup>3</sup> Article 19(2) requires of States Parties the following:

Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as a for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

<sup>4</sup> See *Report of the Committee on the Rights of the Child*, 47 UN GAOR, Supp (No. 41), Annex 3, UN Doc A/47/41 (1992).

Parties to provide relevant information on the range of measures adopted or in force, including providing information on the existence of any system of mandatory reporting for professional groups working with and for children. The UNCRC Committee has recommended mandatory reporting (of child abuse, including sexual abuse) in its concluding observations to State Party reports,<sup>1</sup> although Hodgkin and Newell identify the potential conflict with children's right to confidential advice (from doctors and health professionals, for example) and their right to privacy.<sup>2</sup>

The Report of the independent expert, Paulo Sergio Pinheiro, for the UN Study on Violence against Children also raised mandatory reporting, which would apply to all forms of violence including sexual offences. The Report recommends 'that states should establish safe, well-publicized, confidential and accessible mechanisms for children, their representatives and others to report violence against children'.<sup>3</sup> Alive to the low reporting rate even in countries with highly developed protection systems, though, the independent expert noted that '[p]roviding confidential services for children — services which guarantee that they will not report to others or take action without the child's consent unless the child is at immediate risk of death or serious harm — remains controversial in many countries'. This stems from traditional notions that adults know what is best for children, and do not regard their right to privacy and confidentiality as having any counterweight. The UNCRC Committee has, however, in various General Comments issued thus far stressed children's rights to confidentiality especially in relation to accessing health care services, including reproductive health services.<sup>4</sup>

The Convention on the Rights of Persons with Disabilities of 2006<sup>5</sup> (ratified by South Africa) does not mention compulsory reporting of sexual offences against persons with disabilities, including mental disabilities, although Art 16(5) requires States Parties to put in place 'effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted'. Such measures could conceivably include compulsory reporting of sexual offences against persons with mental disabilities, it is argued.

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<sup>1</sup> Hodgkin, R and P. Newell. *Implementation Handbook for the Convention on the Rights of the Child* 3<sup>rd</sup> edn (Geneva: UNICEF, 2007) at 270.

<sup>2</sup> Article 1, 12 and 16 of the UNCRC.

<sup>3</sup> *Report of the independent expert for the United Nations Study on Violence against Children*, UN Doc A/61/299, overarching recommendations, para 104 at 27.

<sup>4</sup> See *General Comment No 3 (HIV Aids and the rights of the Child)*, CRC/GC/2003/3, and *General Comment No 4 (Adolescent health and development in the context of the Convention on the Rights of the Child)*, CRC/GC/2003/4.

<sup>5</sup> United Nations Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, GA Res 61/106, Annex I, UN GAOR, 61st Sess, Supp No 49, at 65, UN Doc A/61/49 (2006), entered into force 3 May 2008.

## 2 HISTORY OF S 54 OF SORMA

This provision was not proposed by the then South African Law Commission.<sup>1</sup> It has its origin in drafts developed during the parliamentary process, and it is clearly for this reason that the motivational background, justification and the comparative jurisprudence, which underpins the import of this particular version of a mandatory reporting obligation, is difficult to discern. However, the fact that it is not a *general* reporting provision, but appears to be one that is more narrowly targeted at vulnerable groups, who are also protected elsewhere in the Act by dedicated provisions (children and persons who are mentally disabled), seems to indicate that the intention was to further the protective nature of the Act. Key differences exist between this provision and various reporting provisions contained elsewhere in legislation, as will be explained next. It is not apparent whether these distinctions were taken into account to any great degree during the drafting process.<sup>2</sup>

## 3 COMPARISON TO REPORTING PROVISIONS UNDER THE CHILD CARE ACT 74 OF 1983, THE CHILDREN'S ACT 38 OF 2005 AND THE INTERFACE WITH S 134 OF THE CHILDREN'S ACT

Whereas the provision requiring the reporting of abuse and deliberate neglect in relation to children under the Children's Act 38 of 2005 has been described as foundational,<sup>3</sup> in that:

- it constitutes the basis for the establishment of the entire child protection system, including the collection of data for Part A of the National Child Protection Register which collates victim information (in the main);

<sup>1</sup> Para 7.7.1 of the Commission's Report deals with community notification and the establishment of a national register for sexual offenders, but the 'community notification' referred to in this particular discussion relates to information being made accessible to communities that a sex offender whose name appears on the Register is living in their midst, or to the distribution of information regarding released sex offenders to law enforcement agencies, citizens, prospective employers and community organisations: see South African Law Commission. *Sexual Offences Report* (Project 107) (December 2002), available at <http://www.doj.gov.za/salrc/reports.htm> (accessed 22 July 2009). In the USA, many states introduced legislation requiring this form of registration by sex offenders, known as 'Megan's Law' after the child victim whose death inspired the introduction of these laws. Hence, the paragraphs of the Report dealing with 'community notification' do not purport to deal with notification to the law enforcement agencies of the commission of a sexual offence against anyone, or of a suspicion about the commission of such an offence, by members of the community, as is envisaged in the section under discussion.

<sup>2</sup> An examination of the (unofficial) minutes of the Parliamentary Portfolio Committee on Justice and Constitutional Development of the latter half of 2006 (on file with the author) revealed very little in the way of substantive discussion of the wording of this section, which was inserted at a very late stage of the legislative drafting process. A passing reference was made to the text of the equivalent provision in the Prevention of Family Violence Act 133 of 1993, and a brief discussion on the time frame for the obligation to report to take effect ('immediately') occurred.

<sup>3</sup> Sloth-Nielsen, J. 'Chapter 7 Child Protection: Part 1' in Skelton, A. M. and C. J. Davel (eds) *Commentary on the Children's Act* (Cape Town: Juta, 2010).

- it provides the starting point for the investigation and follow-up of reports of child abuse and deliberate neglect; and
- it forms the platform for provisions concerning risk assessment and a raft of possible interventions aimed at securing the safety and well-being of the child,

the reporting provision in SORMA is not buttressed by similar system-creating provisions, but appears in isolation. It is not linked in any way, as is the equivalent provision in the Children's Act, for instance, to the gathering of information for the purpose of the National Register for Sex Offenders, nor is there any provision detailing the follow-up or action steps that the receiver of the report is required to undertake. However, some flesh is put on the bones of this rather bare mandatory reporting obligation in the National Instruction 3/2008<sup>1</sup> issued by the South African Police Service, pursuant to this legislation, in August 2008.

#### **4 WHO MUST REPORT? — s 54(1)(a) and 54(2)(a)**

##### **54 Obligation to report commission of sexual offences against children or persons who are mentally disabled**

(1) (a) A person who has knowledge that a sexual offence has been committed against a child must report such knowledge immediately to a police official.

(b) A person who fails to report such knowledge as contemplated in paragraph (a), is guilty of an offence and is liable upon conviction to a fine or to imprisonment for a period not exceeding five years or both a fine and such imprisonment.

(2) (a) A person who has knowledge, reasonable belief or suspicion that a sexual offence has been committed against a person who is mentally disabled must report such knowledge, reasonable belief or suspicion immediately to a police official.

(b) A person who fails to report such knowledge, reasonable belief or suspicion as contemplated in paragraph (a), is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

(c) Any person who in good faith reports such reasonable belief or suspicion shall not be liable to any civil or criminal responsibility by reason of making such report.

The Children's Act contemplates two reporting categories: professionals who in the course of their work deal with children (a long list is provided) as obligated reporters, and so-called 'community' reporters (i.e. members of the general public) who may report a belief that a child is in need of care and protection, but are not compelled to do so. The distinction was motivated by the comparative research

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<sup>1</sup> South African Police Service. *National Instructions on Sexual Offences* GN 865 GG 31330 of 15 August 2008, issued by Consolidation Notice 11/2008. The National Instructions are reproduced as Annexure 2 to the Commentary.

pointing to the fact that generalised community reporting has been found elsewhere to lead to large numbers of unsubstantiated reports, which sap resources insofar as each and every report must be followed up and investigated. The decision was taken during the process of reviewing the Child Care Act by the South African Law Reform Commission Project Committee on the Review of the Child Care Act to reserve the compulsory duty for professionals only, whilst permitting voluntary reporting by persons other than professionals.

The reporting provision in SORMA places the duty to report upon 'a person', which appears to abode of no exception (although see further below for a discussion of one likely exception). This blanket approach by the legislature may raise anomalies. First, it theoretically leads to the absurd proposition that a perpetrator of a sexual offence against a child, or a person who is mentally disabled, must report his or her knowledge of the offence (on pain of criminal sanction), which surely cannot have been contemplated by the legislature. Secondly, a mother or father of a child would technically be compelled to report any violation of the Act committed by or with their child, such as consensual sexual acts between persons above the age of 12 but below the age of 16,<sup>1</sup> since there is as yet no child/parent privilege that could mitigate the impact of this section.

Thirdly, it places a rather iniquitous burden upon health care providers. While s 134 of the Children's Act 38 of 2005<sup>2</sup> makes it a criminal offence to refuse a child, aged 12 years or older, contraceptives where these are available, and requires the preservation of confidentiality in respect of the child's request (subject to the requirement of mandatory reporting, as a health professional, of a conclusion that child abuse has occurred, i.e. such reporting as is required by the Children's Act itself), s 54 of SORMA requires compulsory reporting by the same health

<sup>1</sup> See ss 15 and 16 of the Act and commentary thereon in Chapter 9.

<sup>2</sup> This section has been in force since 1 July 2007, i.e. part of the Act that came into force before the remainder was promulgated on 1 April 2010. Section 134 was amended by Act 41 of 2007, but this was purely a technical correction relating to internal cross references to the correct clauses in the Act. The section provides as follows:

134. (1) No person may refuse—

- (a) to sell condoms to a child over the age of 12 years; or
- (b) to provide a child over the age of 12 years with condoms on request where such condoms are provided or distributed free of charge.

(2) Contraceptives other than condoms may be provided to a child on request by the child and without the consent of the parent or care-giver of the child if—

- (a) the child is at least 12 years of age;
- (b) proper medical advice is given to the child; and
- (c) a medical examination is carried out on the child to determine whether there are any medical reasons why a specific contraceptive should not be provided to the child.

(3) A child who obtains condoms, contraceptives or contraceptive advice in terms of this Act is entitled to confidentiality in this respect, subject to section 110.

worker, necessitating a breach of the confidentiality provided for in the Children's Act. (It must be assumed, after all, that a request for condoms or other contraceptive devices relates to past or future sexual acts that the child, requesting the measures, is involved in or contemplating.) The definition of child abuse, the suspicion of which serves to pierce the veil of the confidentiality provision in the Children's Act includes sexual abuse; but not all forms of sexual activity hit by SORMA will be able to be categorised as constituting child abuse. As is patent from ss 15 and 16, which sections are dealt with in Chapter 9 of the Commentary, consensual sexual activity may be implicated, which may imperil children's access to contraceptives as a result of the fear of disclosure. Considerable scope for conflicts between the Children's Act and SORMA therefore exist.

The purposes of the provision of the Children's Act related to access to condoms and other contraceptive devices has been described as protective of children's health in an era of HIV/Aids transmission, as being effective in recognising their evolving capacities and autonomy, and was designed, too, to mitigate the possibility of unwanted teenage pregnancy.<sup>1</sup> It also gives effect to children's reproductive health rights and aims to flesh out the requirements set out in the UN Committee on the Rights of the Child's *General Comment No 4: Adolescent Health and Development in the context of the Convention on the Rights of the Child*.<sup>2</sup> The difficulty with reconciling s 54 of SORMA with s 134 of the Children's Act lies in the over-broad reach of the reporting section of SORMA, and it is submitted that the two provisions are fundamentally unable to be logically read as anything but mutually contradictory.

Despite the assertion made above that the reporting obligation stretches to encompass 'any person', an examination of s 56(5) of SORMA reveals that there is indeed one class of person who is exempted from the statutory obligations: s 56(5) provides that a person may not be convicted of an offence in terms of (amongst others) s 54 if that person is a child and, in addition, is not a person contemplated in ss 17(1) and (2) or 23(1) and (2), as the case may be.<sup>3</sup> Some children — those under the age of 18 years in accordance with the definition of 'child' created by the Act,<sup>4</sup> and not involved in sexual exploitation of other children or of persons who are mentally disabled — are therefore exempt from the reporting obligation insofar as the Act creates a defence to possible criminal charges for failure to report.

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<sup>1</sup> See Sloth-Nielsen (p18–3 n3) and Sloth-Nielsen, J. 'Child Protection: Part 3' in Davel, C. J. and A. M. Skelton. *Commentary on the Children's Act* (Cape Town: Juta, 2007).

<sup>2</sup> CRC/GC/2003(4) discussed in Sloth-Nielsen, J. 'Of newborns and nubiles: some critical challenges to Children's Rights in Africa in the era of HIV/Aids' 13 *International Journal of Children's Rights* (2005) 73.

<sup>3</sup> See Chapter 21 at 4.

<sup>4</sup> Section 1(1) of the Act.

However, since subsection 54(2)(c), which creates the criminal and civil law exemption for erroneous reporting in good faith, evidently refers to reports concerning sexual offences against persons with mental disabilities only, and not offences concerning children, as will be argued below, and, further, since s 56(5) covers only criminal liability,<sup>1</sup> it remains obscure whether civil proceedings could lie against a child (who is also not a person contemplated in ss 17(1) and (2) or 23(1) and (2)) who fails to report knowledge of offences against another child in terms of s 54(1), or who fails to report suspicions concerning sexual offences against persons with mental disabilities in terms of s 54(2)(a). Hopefully any future judicial interpretation of this section would view potential civil proceedings against a child for failure to report, the unfortunate product of erroneous drafting.

## 5 WHAT MUST BE REPORTED?

The Children's Act 38 of 2005 lays down different criteria governing the issue that must be reported, depending on whether the person is an obligated professional, under s 110(1), or whether the reporting takes place under the discretionary 'community' reporting provision provided for in s 110(2). In a similar vein, a distinction has been created in SORMA as regards the reporting of sexual offences against children, on the one hand, and reporting of sexual offences concerning persons with mental disabilities, on the other. As has been pointed out elsewhere,<sup>2</sup> a key issue in reporting statutes related to child abuse relates to the level of certainty that must be reached for a valid reporting obligation to arise; and, as mentioned in 4 above, it is undesirable as a matter of policy and practice to set the bar so low as to allow the system to be flooded with large numbers of unfounded or unsubstantiated reports.

The Children's Act requires that the obligated reporter must report a **conclusion** on reasonable grounds that the abuse or neglect has occurred.<sup>3</sup>

This implies necessarily that some minimum investigation of the signs of abuse and neglect must have taken place, to lead to the potential reporter weighing up the 'evidence' in order to determine whether the required 'conclusion' has resulted in his or her (professional) opinion.<sup>4</sup>

But, as far as 'community' reporters are concerned, any person who

... **on reasonable grounds believes** that a child is in need of care and protection may report that belief to the provincial department of social development, a designated child protection organisation or a police official.<sup>5</sup>

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<sup>1</sup> See Chapter 21 at 4.

<sup>2</sup> See Sloth-Nielsen (p18-3 n3) and Sloth-Nielsen (p18-6 n1).

<sup>3</sup> Section 110(1).

<sup>4</sup> Sloth-Nielsen (p18-3 n3).

<sup>5</sup> Section 110(2) of the Children's Act 38 of 2005, emphasis added.



Such person must further 'substantiate that conclusion or belief to the provincial department of social development, a designated child protection organisation or police official'; and, if a report is made in good faith, no civil liability may lie on the basis of that report (s 110(3)).

Section 54 of SORMA provides, in relation to sexual offences against children, that the duty to report arises when a person 'has knowledge' about the commission of an offence. This implies more than a mere suspicion or belief. In the view of the author, the standard is therefore set fairly high, a welcome development given that, as discussed below, no exemption from criminal or civil liability has been fashioned for erroneous reporting of sexual offences against a child.

What is required to trigger a compulsory reporting obligation in relation to persons with mental disabilities is not only 'knowledge', but also a 'reasonable belief' or a 'suspicion'. Knowledge presumably means the same as discussed above, but a reasonable belief need not be based on confirmed facts, provided there is a basis for the reasonable belief, and a (mere) 'suspicion' lowers the threshold considerably. It is not clear why the threshold for reporting offences against persons with mental disabilities differs so dramatically from that pertaining to offences against children.

The lower threshold founding an obligation to report in the instance of offences against persons with mental disabilities is accompanied by a difference in relation to the exemption from liability for erroneous reporting. Even for reports concerning persons with mental disabilities, s 54(2)(c) inexplicably does not provide for an exemption for reporting based on 'knowledge', but only for erroneous reports based on 'reasonable belief' or 'suspicion'. The absence of the reference to an exemption for reports based on 'knowledge' in s 54(2)(c) substantiates the point made above that there is, for some reason, no legal exemption for unfounded reports made in good faith where offences against children are concerned. This interpretation is further reinforced by the placing of the exemption in subsection 54(2), indicating that it does not apply to reports made under subsection 54(1), the reporting provision concerning sexual offences against children.

## **6 OBLIGATION TO FOLLOW UP REPORTS RECEIVED**

The designated person to whom reports under s 54 are required to be made are police officials, unlike the Children's Act, which provides for reports of child abuse or neglect also to be made to designated child protection organisations or to the Department of Social Development (to enable programmes of social recovery to be put in place). Also deviating from the approach followed in the Children's Act,

SORMA does not lay down any follow-up actions or procedures that bind the police official receiving the report.<sup>1</sup>

However, the National Instruction 3/2008,<sup>2</sup> provides further clarity in regard to action steps that are required. Clause 4(5) exhorts the police official, receiving a report under either s 54(1) or (2), to ‘under no circumstances turn such a person away’. Rather, the member must consider the information and —

- (a) if the member is satisfied that there are reasonable grounds to believe that such an offence was indeed committed, take an affidavit from the person setting out the information provided by that person, open a docket for the investigation of the offence that was allegedly committed and register the docket on the CAS system; or
- (b) if the member is not satisfied that there are reasonable grounds to believe that such an offence was indeed committed, consult with the Community Service Centre Commander who must make a comprehensive OB entry of the report and the reasons why the Commander is not satisfied that there are reasonable grounds to believe that such an offence was indeed committed and provide the number of the OB entry to the person who made the report. The entry must include sufficient particulars of the person that made the report to enable him or her to be located and be interviewed if this turns out to be necessary.

The National Instruction emphasises that reports that a sexual offence has allegedly been committed against any person must always be viewed in a very serious light and that the official receiving such report must pay immediate attention thereto, irrespective of how long ago (before the report) the offence was allegedly committed or in which station area it was allegedly committed.

The National Instruction refers to telephonic reports being received of the commission of a sexual offence. Again, it is not clear from the wording of s 54 whether telephonic reports would suffice to fulfil the mandatory reporting requirements set out in this section, or whether a written affidavit is contemplated. Here, again, the Children’s Act provides for the recording of received reports in the prescribed manner, and the Regulations provide for a form (Form 22) in which all necessary details are to be noted. This is necessitated, too, by the link between the reporting requirement and the National Child Protection Register, since the information captured from the initial report is also that which will be required for the entry

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<sup>1</sup> See, by contrast, s 110(4) of the Children’s Act, which requires a police official to whom a report has been made to ensure the safety and well-being of the child concerned, if the child’s safety or well-being is at risk and, within 24 hours, to notify the provincial Department of Social Development or a designated child protection organisation of the report and any steps that have been taken with regard to the child.

<sup>2</sup> GN 865 GG 31330 of 15 August 2008; see Annexure 2.

of the case details into Part A of the Child Protection Register.<sup>1</sup> Since there is no link between s 54 and the National Sex Offenders Register at all, it would probably be fair to assume that telephonic reports, as well as other forms of electronic communication, such as email, are not excluded at this point as mechanisms for achieving compliance with s 54 and avoiding the possibility of criminal sanctions.

## **7 ETHICAL ISSUES**

The National Instruction does note in Clause 4(4) that some reporters may be 'unwilling reporters', and be reporting only under statutory threat of possible prosecution for failing to do so when legally required. From this, it is also abundantly clear that the mandatory reporting requirements are set to lead to a myriad of ethical challenges at a practical level.

Take, for example, research concerning sexual activity and teenagers, an area of much public health research in the era of HIV/Aids. Legally, the researcher would be compelled to disclose any violation of SORMA emerging during the research process, including the consensual activities criminalised under s 16.<sup>2</sup> Moreover, the legal compulsion to report this would have to be revealed to any research subjects at the outset of the research, if the conventions of research ethics were to be followed. It can be suggested that research projects around topics related to teenage sexuality will become rare, especially where research subjects are aged between 12 and 16 years.

The health workers' dilemma has already been discussed in 4 above in relation both to conflicting legislative obligations, and the ethical breach of confidentiality in relation to patients (including child patients). Whether there is also a conflict between the reproductive and other dignity rights of persons with mental disabilities (for instance as envisaged in the UN Convention on Persons with Disabilities, which South Africa has ratified), and the obligation to report imposed upon potential health service providers to persons with mental disabilities, is a complex issue which lies beyond the scope of this Chapter.

Health workers who face particularly direct decisions concerning the legal extent of their reporting obligation are those dealing with termination of pregnancy or the provision of 'day after'-type contraception. They will face this dilemma both in relation to sexual offences against children,<sup>3</sup> and persons with evident mental disabilities. Other categories of people who may find themselves facing ethical choices in the context of children's right to privacy and confidentiality, professional ethical standards and SORMA are teachers, school administrators, and guidance counsellors in the school setting.

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<sup>1</sup> This part of the Register contains the identifying details and steps taken to safeguard child victims of abuse in respect of whom reports of deliberate abuse and neglect have been received.

<sup>2</sup> See commentary on s 16 in Chapter 9 at 4.

<sup>3</sup> It must be noted that the Choice on Termination of Pregnancy Act 92 of 1996 does not specify a minimum age for the performance of a legal termination, provided that the normal common law rules of consent to medical procedures apply in respect of young children, especially those below the age of 12 years, who must be in a position to give informed consent if parental assistance is to be

It is questioned, given the evident poor drafting of the provision of s 54, and the cursory research and debate that appeared to precede it, whether the full legal dimensions of mandatory reporting for alleged sexual offences have been properly canvassed in South African law. The noble sentiment behind requiring enhanced protection for child victims and those with mental disabilities is welcome, and the intention to break the silence around sexual violations is, perhaps, a necessary precursor to addressing the scourge of (especially) non-stranger sexual offences in our society. However, it is a pity that the more nuanced public health policy dimensions of this legal provision could not have been more adequately researched and debated prior to the introduction of a potentially drastic measure accompanied by the threat of criminal sanctions.

dispensed with (*Christian Lawyers Association v Minister of Health and others* 2005 (1) SA 509 (T)). The provisions of the Children's Act relating to consent to medical treatment and to surgical operations are not on all fours with those of the Choice on Termination of Pregnancy Act, but again, the provisions of the Children's Act are subject to the earlier provisions of the Choice on Termination of Pregnancy Act and do not, in consequence, override them. See, for a general discussion, Sloth-Nielsen, J. 'Child Protection: Part 4' in Skelton and Davel (eds) (p18–6 n1).